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A Religious Attack on a Legal Issue

Florentine Lehar, Communication '08

Should same sex couples have the same marriage rights and privileges that heterosexual couples have? This question is problematic because some states are trying to institute these privileges in a time of growing conservatism. The Human Rights Campaign explains that same sex marriage is only legal in the state of Massachusetts, and that in the states of Connecticut, New Jersey, New Mexico, New York, Rhode Island, and the District of Columbia, the law does not explicitly prohibit same sex marriage. The state of Vermont allows same sex couples to have civil unions in which they are given some, but not all of the rights given to heterosexual couples (Johnson). In most states, there are provisions that void marriages between same sex couples, and many have marriage laws that define marriage as being between a man and a woman. There are still laws being passed in state legislatures barring same sex marriage, and gay rights activists are working to allow same sex couples to marry.

The problematic question about same sex marriage indicates the need for civil discourse. Loyola University in New Orleans is trying to address this need by publishing a journal on civil discourse, which is organized by the university's Loyola Society of Civic Engagement. Although Loyola University is a Jesuit and Catholic institution, the civil discourse journal is bipartisan and presents both sides of each controversial issue represented (Loyola). After the 2004 debate at Loyola University on same sex marriage, *The Loyola Journal of Civil Discourse* published the position paper of retired Judge Darrell White on the subject of same sex marriages in the United States.

White argues against the legalization of same sex marriage and gives various reasons that range from his discussion of the meaning of same sex marriage to how the marriages would affect the children raised by same sex couples. White begins his text with his definition of "sexual orientation" and how the phrase includes "erotic attractions" that extend beyond homosexuality. The judge continues his argument by going into his view of the purpose of marriage: marriage is to be between a man and a woman, and it is an essential part of a family. White also declares that marriage will suffer if same sex marriage is legalized, ending on the claim that the Bible opposes same sex marriage. Although White effectively presents his situated ethos in his text, he fails to credibly invent ethos throughout the argument.

White makes good use of his situated ethos. Situated ethos is the use of the writer's social reputation or power that allows the audience to trust the writer, which, in turn, allows the writer to gain and maintain control of the situation. Sharon Crowley and Debra Hawhee, the authors of *Ancient Rhetorics for Contemporary Students*, define situated ethos as "proof from character that depends on a rhetor's reputation in the relevant community" (437). A writer with power in the community or situation uses situated ethos as an appeal that shows he or she is qualified to speak on the subject at hand. White uses situated ethos well in his text because of his position as a judge, which he makes known by telling his audience, "In court my experience as a judge, terms must have precise meaning for justice to be served." White is a retired judge, which implies not only that he had legal education, but also that he is very experienced in the field of law and is qualified to speak on subjects relating to the law. He is also a law professor who taught a judicial ethics class. As a judge and professor, White is seen as being knowledgeable in law and has authority over those not educated in the field of law, or those not in a law career for an extended amount of time.

Although at first glance it may seem White demonstrates intelligence, he does not make good use of this rhetorical appeal. Intelligence is demonstrated by the use of credible sources. A writer must show the audience that he or she is well educated and informed on the subject of discussion. Crowley and Hawhee say, "Rhetors can create a character that seems intelligent by demonstrating that they are informed about the issues they discuss, and by refraining from using arguments that are irrelevant or trivial" (171). By using respectable sources and not incorporating irrelevant arguments, a writer can show the audience that he or she is informed on the subject and qualified to speak about it, which is a good demonstration of intelligence. Although White uses intelligent language and some qualified, unbiased sources such as the American Bar Association's 1990 *Model Code of Judicial Conduct* and the January 14, 2000 *Morbidity and Mortality Weekly Report*, many of his sources are questionable due to their religious bias. White uses Webster's 1828 *Dictionary of the English*

Language to explain the meaning of “sexual orientation,” “misconstruction,” and “marriage.” To many people, the dictionary is a very trusted source, but people never consider that a dictionary is a reference for the definitions of words and that words may have different meanings to different people. Noah Webster was a Puritan, and The Foundation for American Christian Education promotes using Webster’s 1828 dictionary over the 1980 version, because Webster’s *1828 Dictionary of the English Language* is “the only dictionary in the world...to utilize God’s written word as a key to the meaning of words.” In his text, White defines the word marriage as “the legal union of a man and woman for life.” White fails to give the entire definition of marriage from Webster’s *1828 Dictionary of the English Language*, which defines marriage as

The act of uniting a man and woman for life; wedlock; the legal union of a man and woman for life. Marriage is a contract both civil and religious, by which the parties engage to live together in mutual affection and fidelity, till death shall separate them. Marriage was instituted by God himself for the purpose of preventing the promiscuous intercourse of the sexes, for promoting domestic felicity, and for securing the maintenance and education of children. Marriage is honorable in all and the bed undefiled. Heb.13.

1. A feast made on the occasion of a marriage. The kingdom of heaven is like a certain king, who made a marriage for his son. Matt.22.

2. In a scriptural sense, the union between Christ and his church by the covenant of grace. Rev.19.

This definition is based on how marriage is defined by the Bible and is therefore religiously prejudiced. White fails to include the entire definition in his text and excludes the part of the definition that relates to religion. He thereby makes the definition seem as if it were unbiased, when in fact the definition, when looked at as a whole, is extremely religiously predisposed. Any source based on Christian beliefs should not be the basis for the definition of marriage from a legal point of view.

White uses many other religiously or conservatively biased sources, which lessen the appeal of his intelligence, because it shows that he did not do research on the subject from an unbiased point of view. White quotes Glen Stanton from Focus on the Family who says, “spin a globe, put your finger down on any inhabited landmass, travel there at any time in human history... and you will find they do marriage as a social norm, between men and women. There are simply no exceptions!” Focus on the Family is a religious based group whose mission is “To cooperate with the Holy Spirit in disseminating the Gospel of Jesus Christ to as many people as possible, and, specifically, to accomplish that objective by helping to preserve traditional values and the institution of the family.” The views of those associated with Focus on the Family are religiously partial and thus are not credible sources in a legal argument. White also quotes Maggie Gallagher, president of the Institute for Marriage and Public Policy, which has an online site that is devoted to showing both sides of the marriage debate. White says, “Gallagher explains that people who think know that children need mothers and fathers.” The major problem with quoting Gallagher is that she is a known conservative columnist sympathetic to White’s religious bias. Furthermore, White quotes Paul Weyrich, who NewsMax.com claims is “one of the top three ‘most popular conservatives in America not in Congress,’” as saying, “Give same-sex couples the ‘right’ to marry and we can expect some severe consequences.”

White continues to incorporate more religiously biased sources, including the Bible, Orthodox Rabbi Daniel Lapin, and Archbishop Fulton Sheen. White quotes Rabbi Daniel Lapin as saying “A canyon cuts across our culture. Deep and wide, it separates one group of Americans from another... those who consider the Bible to be a still valid and vital guide to right and wrong from those who dismiss it as an ancient relic with little contemporary significance.” Lapin is president of Toward Tradition, whose mission statement says that it is “a non-profit (501.c.3), educational organization working to advance our nation toward the traditional Judeo-Christian values that defined America’s creation and became the blueprint for her greatness.”

Finally, White ends his text with a quote from Archbishop Fulton Sheen who said, “America, it is said, is suffering from intolerance. It is not. It is suffering from tolerance of right and wrong, truth and error, virtue and evil, Christ and chaos. Our country is not nearly so much overrun with the bigoted, as it is overrun with the broad-minded... [I]n the face of this broadmindedness, what the world needs is intolerance.” Sheen was a Roman Catholic Bishop, and is therefore a biased source in the same way that Rabbi Daniel Lapin is a biased source: religious leaders promote the views of their religion, and religious views should not be the reason for the creation or destruction of state and federal laws in a country where there is a separation between church and state. Along with using biased sources, White fails to mention both sides of the same sex marriage debate. By failing to offer information on, or reasons why, people favor same sex marriage, he does not allow the audience to agree that his line of reasoning is superior to that of the people who support same sex mar-

riage. White fails to demonstrate intelligence by using religiously biased sources and by failing to show both sides of the argument.

Moreover, White is not successful in demonstrating good character throughout his text. Good character is a measure of the writer's character and background; it is a measure of who the writer is as a person. Crowley and Hawhee describe good character as a display of the rhetor's good moral character, where the rhetor will use "moral standards as means of proof" (175). A writer can display good character by citing people of authority who hold the writer in high regard, establishing a respectable history of themselves, and by morally appealing to the audience (Crowley and Hawhee 176). Although White is most likely held in high regard, he does not make any reference to the views others have of his character. White does not establish a history, but only uses his situated ethos well. White's largest failure in creating good moral character is his moral appeal to the audience, and there are various ways in which he fails to show good character. Although denying it in his text, White gives the impression of being homophobic and even attempts to say that homosexuality is a mental disorder by mentioning that homosexuality was in the American Psychiatric Association's current *Diagnostic and Statistical Manual IV*, when in fact homosexuality was deleted from the *DSM* in 1973 (Isay).

White also relates homosexuality to bestiality through metonymy. Crowley and Hawhee say, "[m]etonymy names something with a word or phrase closely associated with it" (307); however, metonymy can also be a chain of association where one part of a word is associated with another word, even if the two words have completely different meanings. White begins his chain of word association by saying that same sex marriage is the same as "erotic attraction." White then declares that homosexuality, which he claims is an "erotic attraction" is the same as any "deviant erotic attraction" including pedophilia and then goes on to say that this is the same as bestiality. White ultimately compares homosexuality to bestiality through metonymy and thus implies that homosexuals are beasts. White claims that if marriage can include same sex couples, then it would also have to include polyamorous and "sanctioned bestial relationships." As noted earlier, White quoted Glenn Stanton who attacks homosexuality and claims that marriage should only be between a man and a woman. White's additional fault in good character relates to his fault in intelligence. The constant use of religious sources and quotes from well-known religious leaders draws on the issue of White, himself, as being religiously biased. Although some mention of religion would have been acceptable so as to appeal to religious members of the audience, especially since Loyola University is a Jesuit and Catholic institution, the drawn out emphasis on religion gives a sense that a secular point of view is overtaken by religion. White does not appear to display good character, because he attacks homosexuality and puts too much emphasis on religion.

White's only good demonstration of ethos is the presentation of his situated ethos. He fails to invent respectable intelligence or good moral character. White's major flaws are his emphasis on religious views on a topic that is of a secular nature, and his homophobia. White's opponent at that Loyola University debate over same sex marriage was Michael Bronski, a well-known journalist and culture critic, whose speech was not published by *The Loyola Journal of Civil Discourse*. *The Boston Phoenix* published Bronski's response to his experience at the debate and to White's speech. Bronski affirms, "Judge White kicked off his portion of the debate by implying that all gay people were mentally ill... He then went on at length about people having sex with animals, which, according to the judge, would logically follow from the legalization of same-sex marriage. Bronski also asserts White's religious emphasis by stating, 'All culture wars, he [White] declared, come down to 'Who sez?' Then, waving his Bible at the audience, he announced: 'I say that He sez.'" Bronski's comments about White's speech and the debate confirm the problems I found in White's appeals to ethos. Bronski's remarks also show that White's faults could be easily picked up when listening to his speech and actually seeing White speak. As an advocate of the legalization of same sex marriage, I was strengthened in my belief on the subject after reading White's text. Bronski's article further helped me realize that White's speech was not only lacking, but also insulting to homosexuals. Due to his weak invented ethos, White is not a good representative for those against same sex marriage, and his speech does not have the power to persuade those who disagree with him on the issue.

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